

## Office of Personnel Management

## § 752.401

addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and an order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

### § 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

[45 FR 46778, July 11, 1980, as amended at 57 FR 20043, May 11, 1992; 58 FR 13192, Mar. 10, 1993]

## Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

### § 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

- (1) Removals;
- (2) Suspensions for more than 14 days, including indefinite suspensions;
- (3) Reductions in grade;
- (4) Reductions in pay; and
- (5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

- (1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;
- (2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;
- (3) A reduction-in-force action under 5 U.S.C. 3502;
- (4) A reduction in grade or removal under 5 U.S.C. 4303;
- (5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under part 731 or part 754 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation.

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1

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year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100–90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at section 105 of title, 5, United States Code, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(9) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by: the President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in section 8337(h)(1) of title 5, United States Code, who is employed under section 709(b) of title 32, United States Code;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency or the General Accounting Office;

(8) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 5, United States Code;

(9) A nonpreference eligible employee with the U.S. Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, United States Code;

(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service; and

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code.

[53 FR 21622, June 9, 1988, as amended at 58 FR 13192, Mar. 10, 1993]

**§ 752.402 Definitions.**

(a) *Day* means a calendar day.

(b) *Current continuous employment* means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break in Federal civilian employment of a workday.

(c) *Furlough* means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.